Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

LUCY C. IFILL,

Petitioner,

v.

DISTRICT OF COLUMBIA, ET. AL.,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

---

PETITION FOR A WRIT OF CERTIORARI

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79 pp

QUESTIONS PRESENTED FOR REVIEW

1. Where the Board of Education and the Superintendent of Schools for the District of Columbia were made aware of and had knowledge of the harassment and intimidation of the Petitioner on account of the exercise of her first amendment rights and had the power to but did nothing to thwart the same, could they be enjoined from failing to exercise their authority to prevent the harassment and intimidation of Petitioner?

2. Were the letters written by Petitioner, a District of Columbia Public School teacher, to the School Board and to the Superintendent of Public Schools and to the Mayor requesting an additional teacher to ease classroom overcrowding and protesting the proposed erection of a barrier as endangering health and safety protected speech?

3. Must Petitioner exhaust administrative remedies in order to satisfy one of the requirements for an injunction- that there is no adequate remedy at law- when Petitioner seeks to enjoin conduct alleged to be violative of her First Amendment right?

4. Where the dismissal of Petitioner's suspension lawsuit on the basis of failure to exhaust administrative remedies was deemed erroneous by the District of Columbia Court of Appeals should the District of Columbia Court of Appeals have remanded Petitioner's lawsuit based upon her

suspension so that she could have had the opportunity to clear her name and remove the suspension order where the suspension lawsuit alleged in addition to the letters deemed unprotected speech that Petitioner's suspension was based upon the fact that she was being retaliated against for filing lawsuits against the defendants?

LIST OF PARTIES TO THE PROCEEDING IN THE COURT BELOW

The parties to the proceeding in the District of Columbia Court of Appeals were:

Lucy C. Ifill

The District of Columbia

Dr. Franklin L. Smith

The District of Columbia Board of Education

Deborah Jackson Neismith

Timothy Williams

Johnny Lowe

Gilda H. Lambert

There are no parent or subsidiary companies to be listed pursuant to Rule 29.6 of the Rules of the United States Supreme Court.

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Lucy C. Ifill petitions this Court for a Writ of Certiorari to review the judgment of the District of Columbia Court of Appeals in this case.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is published, Ifill v. District of Columbia, 655 A. 2d 185 (1995). Appendix A.

The decision of the District of Columbia Court of Appeals denying the Petition for a Rehearing and a Rehearing en banc is unpublished and is reproduced in the appendix as Appendix B.

The Order of Judge Long of the Superior Court of the District of Columbia dated April 20, 1992 is unpublished and is reproduced in the appendix as Appendix C.

The Order of the Judge Shuker of the Superior Court of the District of Columbia is unpublished and is reproduced in the appendix as Appendix D.

JURISDICTION

The order of the District of Columbia Court of Appeals denying the Petition for a Rehearing and For a Hearing en Banc was entered on December 21, 1995.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 2101 (c).

STATUTES AND RULES INVOLVED

United States Constitution
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

42 U. S. C. Sec. 1983
Civil Action for Deprivation of Rights

Every person who, under the color of any statue, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia , subjects or causes to be subjected , any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws , shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

District of Columbia Code

31-101. Compisition; election;term of office; vacancies; meetings.

(a) The control of the public schools in the District of Columbia is vested in a Board of Education to consist of 11 elected members , 3 of whom are to be elected at large, and 1 to be elected from each of the 8 school election wards established under Chapter 13 of Title 1. The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with such chapter.

31-107. Superintendent; appointment; term of office; duties.

The Board shall appoint 1 Superintendent for all the public schools in the District of Columbia, who shall hld said office for a term of 3 years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the Board and the right to speak on all matters before the Board, but not the right to vote. The Board of Education is authorized to delegate any of its authority to teh Superintendent. The Superintendent is authorized to redelegate any of his or her authority subject to approval of the Board.

District of Columbia
Municipal Regulations
(D.C.M.R)
Chapter 14

1400.1 The following adverse actions shall be subject to the rules and procedures set forth in this chapter:

(a) Dismissal;
(b) Suspension; and
(c) Demotion for cause.

...

1401.1 Adverse actions shal be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious.

1401.2 For purposes of this section, "just cause" may include , but is not limted to , one (1) or more of the following grounds:

...

(n) Discourteous treatment of the public, supervisor, or other employees;

...

(u) Any other cause authorized by the laws of the District of Columbia;

(v) Other conduct during and outside of duty hours that would affect adversely the employee's or agency's ability to

perform effectively; ... .

STATEMENT OF THE CASE

Petitioner was a Special Education teacher employed by the District of Columbia Public School system. Petitioner wrote a series of letters to the Acting Superintendent of the District of Columbia Public School Board, to the then Mayor of the District of Columbia, to the Superintendent of the District of Columbia Public School system about (1) a teacher shortage in the Special Education Program at the school where she was employed; (2) about the proposal to build a make-shift partition to separate two classes; (3) about harassment and intimidation by the principal and other supervisors at the school in which she was employed on account of her having written letters to the School Board, the Superintendent of Schools, and the Mayor to have the teacher shortage in the Special Education Program addressed and remedied, and to prevent the construction of a make-shift partition which, if constructed and put into place, would have resulted in health, fire, and safety code violations, as well as violations of standards for classroom structure.

The letters are set out in the appendix at Appendix E.

As a result of the letters written, a teacher was hired and the overcrowding situation was remedied. As a result of the letters written the make-shift partition was not constructed and a classroom was assigned to the newly hired teacher.

However, the harassment and intimidation of the petitioner by the principal and other supervisors increased each day. Petitioner received poor ratings from the principal and her supervisors and was verbally harassed and abused by the principal and her supervisors during the course of their supervision of her.

Despite complaints and requests for help made by petitioner to the Superintendent of Schools and to the School Board about the harassment and intimidation, nothing was done.

Petitioner than filed suit, which was to be the first of several lawsuits, for declaratory and injunctive relief. She sought to have the defendants restrained and enjoined for violating her first amendment rights on account of harassment and intimidation she endured for writing letters as referred to above.

The Superior Court of the District of Columbia through Judge Long declined the issue and injunction and dismissed the case on the basis that the petitioner failed to seek administrative relief and thus could not satisfy one of the requirements for an injunction- no

adequate remedy at law.

The lengthy opinion of Judge Long is reproduced in the appendix as Appendix C

Next, while the action for injunctive relief was pending, and on account of having filed suit against the defendants for injunctive relief, petitioner's harassment and intimidation by the defendants grew worse. Petitioner then filed a second lawsuit for damages against the defendants for violation of her first amendment rights.

Petitioner's second lawsuit was dismissed by the trial court on the basis that Judge Long's ruling on the complaint for declaratory and injunctive relief was res judicata and that the complaint for damages was therefore barred.

The harassment and intimidation of the Petitioner grew worse and Petitioner was issued a suspension order for insubordination. Petitioner then filed suit to enjoin her suspension. She alleged that the suspension was issued her on account of having filed two lawsuits against the Respondents and was a continuation of the harassment and intimidation she continued to endure on account of having written letters protesting the teacher shortage and the proposal to build a make-shift partition.

A temporary restraining order was issued, pending the hearing on a motion for a preliminary and permanent injunction. The court at the hearing for

a preliminary and permanent injunction dismissed the complaint for failure of the plaintiff to exhaust administrative remedies.

The adverse decisions were all appealed to the District of Columbia Court of Appeals. The appeals were consolidated.

The District of Columbia Court of Appeals in his decision and opinion Ifill v. District of Columbia, 665 A. 2d 185 (1995) ruled that:

1. The Board of Education and the Superintendent of Schools took no action to thwart the First Amendment rights of the Petitioner and were thus not subject to being enjoined for their non-action.

2. Petitioner was not required to exhaust administrative remedies but that the letters the petitioner wrote were not of matters of public interest;that they concerned matters of private grievance and were matters of potential public interest, not entitled to First Amendment protection;

3. That the trial court was wrong in dismissing the complaint for damages, but that because the letters written were not entitled to First Amendment protection, petitioner could not sue for damages.

4. That the trial court was wrong in dismissing the complaint of the petitioner, which challenged her suspension, on the basis of failure to exhaust administrative remedies, but

allowed the suspension to stand based upon its reading of the complaint as concerning matters related to the letters which the court ruled were not protected speech.

Petitioner filed a Petition for Rehearing and for a Hearing en banc. Without comment the Petition for Rehearing and for a Hearing en Banc was denied.

REASONS FOR GRANTING THE WRIT

1. Error On the Part of the District of Columbia Court of Appeals that the Non Action of the District of Columbia Board of Education and Superintendent of Schools Were Conduct That Was Not Enjoinable

The control of the public schools in the District of Columbia is vested in the Board of Education. 30-101 D. C. Code, 1981 Ed. as amended.

The Superintendent of Schools has a seat on the School Board and has the authority to direct and to supervise all matters pertaining to education in the District of Columbia. The Superintendent of Schools has the authority to redelegate any of his authority. 30-107 D. C. Code, 1981, Ed. as amended.

Under regulations issued the

Superintendent of Schools is deligated the authority by the Board of Education to initiate adverse actions against an employee for discourteous treatment of the public, supervisor, or other employees, and for any misconduct, and for violation of law. 5 D.C.M.R, Sec. 1401.

The District of Columbia Board of Education and the Superintendent of Public Schools had knowledge of the conduct complained of by the Petitioner and they failed to do anything to thwart the conduct. Under the circumstances their conduct of non-action was enjoinable. Calhoun v. Doster, 324 F. Supp. 736 (1971); Cottonreader v. Johnson, 252 F. Supp. 492 (1966), Byrd v. Brishke, 466 F. 2d 6 (1973); Pembaur v. Cincinnati, 475 U.S.469, 106 S. Ct. 1292, 89 L.Ed. 2d 452 (1986); Lopez v. Houston Indpendent School Dist.817 F. 2d 351 (1981).

2. Error On the Part of the District of Columbia Court of Appeals in Classifying Letters as Unprotected Speech.

Petitioner's letters concerned the quality and level of services provided in the District of Columbia public schools. Petitioner's letters also concerned the health, safety of the District of Columbia Public schools students and teachers who were to be affected by the proposed barrier, were it to be erected. The barrier as proposed was not erected because of the petitioner's complaint. A

needed teacher was hired because of petitioner's complaint.

Petitioner's letters concerned the District of Columbia Public School's violation of the District of Columbia building code which protects the health, safety and welfare of public school students and teachers.

Petitioner's letters concerned the violation of school regulations with respect to teacher-pupil ratios. These ratios are set by law and are related to the quality of services.

The violation of state regulations as well as quality and level of services provided are matters of public concern. Waters v.Churchill, 511 U.S._____, 114 S. Ct. 1878, 128 L. Ed.2d 686 (1994).

The District of Columbia Court of Appeals was wrong in classifying the letters as unprotected speech. Connick v. Myers, 461 U.S. 138, 103 S. Ct. 1684, 75 L.Ed. 2d 708; Perry v. Sindermann, 408 U.S.593, 92 S.Ct. 2694, 33 L.Ed. 2d 570.

There was no finding made in the lower court as to whether the letters were or were not protected speech. The District of Columbia Court of Appeals considered this issue de novo.

There was no fact finding or testimony developed below as to the form, context of the speech or how the respondents interpreted the speech. The District of Columbia Court of Appeals dealt with this issue de novo although

there was no factual record or evidentiary basis for such a de novo review. See, Waters v. Churchill, supra.

The form, context, and the content of the letters all relate to the level of services provided special education students, the quality of the learning environment, and the health and safety of the students.

There was no fact finding by the lower court on any issue as there was no evidence presented on any issue by their respondents in their motion for summary judgment. See, Judge Long's order. In short, the record in the Superior Court was sparse so that no finding could have been made on any issue ruled upon by Judge Long. See, Order of Judge Long.

There was no finding as to the responsibilities of respondent Lowe whom the Court of Appeals found to be not within the scope of liability and there was no evidentiary basis for any finding with respect to the scope of respondent Lowe's duties.

2. The District of Columbia Court of Appeals was Wrong When it Affirmed Judge Long's Order

Judge Long made no finding as to whether the letters were or were not protected speech, and if protected, whether an injunction should issue consistent with Elrod v.Burns, 427 U.S.247,373-374, 96 S. Ct.2673, 2689-90,

49 L.Ed.2d 547 (1976).

Judge Long's order applied due process considerations to First Amendment analysis. Judge Long's order and its affirmance by the District of Columbia Court of Appeals in material parts means that one seeking injunctive relief on the basis of an alleged First Amendment violation would have to use administrative remedies before seeking to have such alleged violations remedied in order to satify one of the requirements for injunctive relief- that there is no adequate remedy at law- contrary to this court's holding in Patsy v.Florida Board of Regents, 457 U.S. 496, 102 S.Ct. 2557, 73 L. Ed. 2d 172; McNeese v. Board of Education, 373 U.S. 668, 83 S.Ct. 1443 , 10 L.Ed. 2d 622; Howlett v. Rose, 496 U.S. 356 110 S. Ct. 2430,110 L. Ed. 2d 332.

Judge Long confused due process considerations and first amendment considerations. Judge Long analyzed this case as a due process case and held that petitioner must use other remedies before seeking an injunction for alleged First Amendment violations. The District of Columbia Court of Appeals agreed with Judge Long. Thus, there is now the requirement in the District of Columbia that one seeking to enjoin First Amendment violations must exhaust any other remedy before coming to court in order to meet one of the requirements for an injunction-that there is no other adequate remedy at law. In this case that meant administrative remedy.

3. The Dismissal of Petitioner's Suspension Lawsuit and the Refusal to Reinstate this Suit was Error.

The District of Columbia Court of Appeals ruled that the trial judge was wrong in dismissing the petitioner's suspension lawsuit for failure to exhaust administrative remedies, but viewed the lawsuit as resulting from the letters written and held to be unprotected speech.

The suspension lawsuit alleged that petitioner was suspend on account of a campaign of harassment and intimidation and on account of the fact that she had filed lawsuits against the defendants for harassment and intimidation on account of violations of her first amendment rights. Appendix F.

Thus, the analysis by the District of Columbia Court of Appeals that the suspension lawsuit rested on the basis of the letters which the court ruled were un-protected speech was erroneous. See, Complaint in Suspension Lawsuit, Appendix F.

There was thus an issue of fact precluding the method of disposition of the suspension lawsuit by the District of Columbia Court of Appeals. It was alleged that petitioner was suspended on account of the lawsuits she had filed against the defendants for alleged violations of her first amendment rights.

There was thus an issue of fact

which precluded the disposition by the District of Columbia Court of Appeals. Mt.Healthy City Board of Education v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed 2d 471.

Petitioner was entitled to have the legality of her suspension determined and removed and to take any other action petitioner feelt necessary.

5.The Disposition of Petitioner's Damages Lawsuit was Improper.

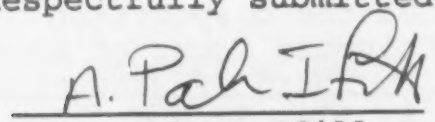
The District of Columbia Court of Appeals ruled that the trial court improperly dismissed petitioner's damage lawsuit on the basis of res judicata, but that since that lawsuit rested on the letters which the court ruled to be unprotected speech, the dismissal was nonetheless proper.

As indicated above, the letters were protected speech, and thus the damages lawsuit should be re-instated.

CONCLUSION

For all of the above reasons the petition should be granted.

Respectfully submitted,



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A-I

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

District of Columbia Court of Appeals

Nos. 92-CV-210, 92-CV-491, 92-CV-981 & 92-CV-1393

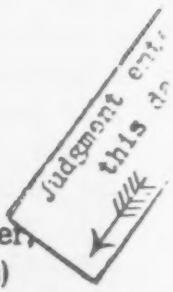
LUCY C. IFILL, APPELLANT,

v.

DISTRICT OF COLUMBIA, *et al.*, APPELLEES.

Appeals from the Superior Court
of the District of Columbia

(Hon. Cheryl M. Long, Hon. Robert A. Shuker, and Hon. Richard S. Salzman, Trial Judges)



(Argued June 1, 1995 Decided September 7, 1995)

Before FERREN and KING, *Associate Judges*, and BELSON, *Senior Judge*.

A. Palmer Ifill for appellant.

Martin B. White, Assistant Corporation Counsel, with whom *Garland Pinkston*, Acting Corporation Counsel at the time the brief was filed, and *Charles L. Reischel*, Deputy Corporation Counsel, were on the brief, for appellees.

BELSON, *Senior Judge*: Before us are four consolidated appeals related to three separately filed complaints in which appellant, Lucy C. Ifill, alleged violations of 42 U.S.C. § 1983. Ifill alleged that she was the victim of a pattern of harassment by various of the appellees, the District of Columbia, the Superintendent of Schools, a school principal and other school system employees, in violation of her First Amendment right to express her views on issues of "public concern." Ifill's main contentions on appeal are: (1) the trial court erred in granting appellees' motion for summary judgment on her first com-

plaint, thereby denying her request for declaratory and injunctive relief; (2) the trial court erred in granting appellees' motion for summary judgment on appellant's subsequent complaint seeking damages based upon *res judicata* resulting from the judgment in the injunction suit because the District had waived this defense by failing to object to claim-splitting in a timely manner; and (3) the trial court erred in dismissing appellant's third complaint for failure to exhaust administrative remedies. We affirm.

I.

On December 6, 1991, Ifill, a special education teacher in a D.C. public school, filed a complaint pursuant to 42 U.S.C. § 1983, seeking only declaratory and injunctive relief against the District and a number of officials and employees of the D.C. public school system. In this complaint, Ifill alleged that she had been subjected to a "campaign of harassment" because of letters she had written complaining about the overcrowding in her classroom. Initially, she attributed the overcrowding to the principal's failure to hire a replacement teacher. After a new teacher was hired, Ifill complained about the proposal to partition her classroom and the ultimate decision to have the new teacher share Ifill's classroom without a partition. Ifill also claimed that the increase of students as a result of the shared classroom was a fire and safety hazard.

Ifill filed an application for a preliminary injunction to preclude school officials from convening a job rating interview with her in the absence of her lawyer. Her appeal from the denial of that application is the first of the four appeals before us, 92-CV-210.[1] On April 20, 1992, the trial court granted

[1] The order from which Ifill took her first appeal was not included in the record on appeal. However, the issues raised in appellant's first appeal are subsumed within appellant's second appeal, and thus, are adequately illustrated and resolved by the trial court's order entered on April 20, 1992, denying injunctive relief to Ifill.

appellees' motion for summary judgment and denied Ifill's request for declaratory and permanent injunctive relief. It was from this order that Ifill took her second appeal, 92-CV-491.

On January 28, 1992, prior to the denial of her request for permanent injunctive relief, Ifill filed a second § 1983 complaint based on the same facts, this time seeking to recover damages. On November 12, 1992, the trial court dismissed this complaint with prejudice and granted appellees' motion for summary judgment because of the *res judicata* effect of the trial court's April 20, 1992, order. Ifill takes her appeal in 92-CV-1393 from this order.

On June 18, 1992, Ifill filed a third § 1983 complaint seeking, as in her first complaint, only declaratory and injunctive relief. Ifill alleged that she was still being subjected to abuse and harassment. The incident that triggered this complaint occurred during the special education students' annual testing period. Ifill hand-delivered a letter to the director of the special education center complaining about the lack of cooperation she was receiving during the testing period from other teachers, and the public humiliation inflicted upon her by the principal by calling Ifill into her office via the public address system. Ifill further alleged that her two-day suspension for insubordination resulting from her failure to appear in the principal's office was part of the continuing retaliation against her by appellees and, thus, the grounds for her suspension were completely false. Initially, Ifill's suspension was temporarily restrained by an order entered by the trial court on June 14, 1992. However, the trial court ultimately dismissed her complaint during a hearing on August 13, 1992, on the ground of failure to exhaust administrative remedies. From this order of dismissal Ifill takes her appeal in 92-CV-981.

II.

Injunctive relief is committed to the sound discretion of the trial court, and this court will not disturb the denial of either

preliminary or permanent injunctive relief absent an abuse of discretion. *In re Antioch Univ.*, 418 A.2d 105, 109 (D.C. 1980); *Wagner v. Taylor*, 266 U.S. App. D.C. 402, 411-12, 836 F.2d 566, 575-76 (1987); *National Ass'n of Greeting Card Publishers v. United States Postal Serv.*, 186 U.S. App. D.C. 331, 363, 569 F.2d 570, 602 (1976), *vacated in part on other grounds sub. nom., United States Postal Serv. v. Associated Third Class Mail Users*, 434 U.S. 884 (1977); *see also* 11A WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: Civil 2d § 2942 (1995). In determining whether a preliminary injunction is appropriate, the trial court must take into consideration four factors: "(1) likelihood of irreparable harm in the absence of a preliminary injunction; (2) likelihood of success on the merits in the underlying cause of action; (3) [whether] the "balance of injuries" favors granting an injunction; and (4) [whether] the public interest would be served by granting the injunctive relief sought." *Antioch, supra*, 418 A.2d at 109. A permanent injunction, however, requires the trial court to find that "there is no adequate remedy at law, . . . the balance of equities favors the moving party, and . . . success on the merits has been demonstrated." 43A C.J.S. *Injunctions* § 16 (1978); *Universal Shipping Co. v. United States*, 652 F. Supp. 668, 675-76 (D.D.C. 1987) (holding that the "[c]ourt must look at the interests of the parties who might be affected by the [injunction] and must also examine whether the facts and the relevant law indicate that an injunction clearly should be granted or denied apart from any countervailing interest").

In a comprehensive order ruling upon the defendants' motion to dismiss or for summary judgment, Judge Long explained her conclusion that Ifill was not entitled to the declaratory or injunctive relief sought in her first complaint because she was unlikely to succeed on the merits. Although Judge Long analyzed Ifill's claims using the test for preliminary injunctive relief, she considered the motion one for summary

judgment,[2] and her analysis is relevant to the imposition *vel non* of permanent injunctive relief.[3]

Judge Long began her analysis by clearly and correctly stating that Ifill was not required to exhaust her administrative remedies prior to filing suit pursuant to § 1983. *See Roache v. District of Columbia*, 654 A.2d 1283, 1284 (D.C. 1995) (reversing trial court's dismissal of a § 1983 action for failure to exhaust administrative remedies); *Miller v. District of Columbia*, 587 A.2d 213, 215 (D.C. 1991).[4]

Judge Long then discussed whether preliminary injunctive relief was appropriate. On the issue of likelihood of prevailing on the merits, Judge Long found that "no evidence has been

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2 When reviewing a grant of summary judgment, this court conducts an independent review of the record and views the facts in the light most favorable to the non-moving party, bearing in mind that once the moving party makes the initial showing that there are no material issues of fact in dispute, the burden shifts to the non-moving party to demonstrate that there is a genuine issue for trial. *Townsend v. Waldo*, 640 A.2d 185, 187 (D.C. 1994).

3 This same analysis allows us to conclude that the trial court did not err in denying Ifill's request for a preliminary injunction which formed the basis for Ifill's first appeal, 92-CV-210.

4 Ifill argued that Judge Long abused her discretion by relying on Ifill's failure to exhaust her administrative remedies when denying injunctive relief. Judge Long concluded that Ifill's failure to exhaust or even pursue any nonjudicial avenues of relief that could have provided adequate relief, and Ifill's failure to show that such avenues of relief were unavailable and/or inadequate, weighed against awarding her the equitable relief she sought in court. We decline to hold that this constituted an abuse of discretion. *See Johnson v. United States*, 398 A.2d 354, 361-62 (D.C. 1979). Judge Long merely considered the alternative administrative remedies available to Ifill when deciding whether injunctive relief was appropriate. Judge Long correctly stated that "[w]hile the mere existence of such remedies does not preclude the filing of a § 1983 action, it is prudent not to grant injunctive relief if there is no pressing, concrete reason to believe that such an extraordinary remedy is the only way in which to provide redress to the plaintiff."

produced that would prove the Superintendent [] or the Board of Education have taken any action to thwart the First Amendment rights of the plaintiff. The Board has done nothing at all, as no administrative complaint was ever initiated. The Superintendent has taken no official action against [Ifill]." Thus, Judge Long concluded that there was no evidence of conduct by the Superintendent or Board offensive to the Constitution.

With respect to the individual defendants, the court also found that "there [was] no evidence in this record that the individual defendants took their actions against the plaintiff 'under color of law' or pursuant to a government policy." Judge Long found that any actions, assuming they were proven, were "a peevish, personal frolic," and not an action accountable under 42 U.S.C. § 1983.

42 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . .

Municipalities and other local government units may properly be sued for monetary, declaratory, or injunctive relief under § 1983 where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Department of Social Serv.*, 436 U.S. 658, 690 (1978); *see Dant v. United States*, 264 U.S. App. D.C. 284, 291-92, 829 F.2d 69, 76 (1987). We sustain Judge Long's findings that the Superintendent and the Board of Education did not institute a policy or any type of action adverse to Ifill, and thus she could not prevail against them in her § 1983

action. For the same reason, summary judgment for the District of Columbia was also appropriate.

Monell also held that "local government officials sued in their official capacities are 'persons' under § 1983 in those cases in which . . . a local government would be suable in its own name." *Monell, supra*, 436 U.S. at 690 n. 55. With respect to the individual defendants, Ifill's complaint alleged that the principal and assistant principal began a campaign of harassment which included: (1) using loud boisterous language and gestures to humiliate Ifill in the presence of others; (2) raising their voices and shouting at Ifill in front of others; (3) speaking ill of her to other teachers and colleagues; and (4) encouraging teachers to file complaints "in an attempt to manufacture witnesses were there to be a hearing." Moreover, Ifill alleged that the principal: (1) attempted to persuade the PTA president to file charges against Ifill and ultimately suspend her from teaching, and (2) gave Ifill poor ratings despite her superior qualifications in order to punish her for writing letters to the Superintendent and School Board. Ifill failed to state a claim against the guidance counselor, Johnny Lowe, however, and did not allege any actions by him in the complaint except for a passing reference that "the [Superintendent and School Board] were made aware of the abusive attitude and conduct of the defendant principal, assistant principal, and Johnny Lowe towards the plaintiff . . . and . . . have neglected and failed to prevent the same." This is not enough to allege that Lowe deprived Ifill of a constitutional right "under color of law."[5]

Ifill does, however, allege that the principal evaluated her unfairly in order to punish her and that both the principal and assistant principal instituted a campaign of harassment in-

[5] While Judge Long stated that she was granting summary judgment for the "individual defendants," it is clear that Ifill failed to state a claim against Lowe as required by Super. Ct. Civ. R. 12 (b)(6). Ifill's claim against Lowe in any event would have resulted in a summary judgment as well, for the same reasons stated with regard to the others, see *infra* pp. 10-16.

volving other employees of the school in retaliation for the letters Ifill sent to the Superintendent and School Board. Because the principal and the assistant principal are in a position to deprive Ifill of a constitutional right "under color of any statute, ordinance, regulation, custom, or usage . . . ." we conclude that Judge Long's granting of summary judgment on the § 1983 claim with respect to them on the basis she stated — that any actions they had taken were a "peevish personal frolic" — was unwarranted. *See Lipsett v. University of Puerto Rico*, 759 F. Supp. 40, 50 (D.P.R. 1991) (one acts under color of state law when exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law," quoting *United States v. Classic*, 313 U.S. 299, 325-26 (1941)). Therefore, we will evaluate *de novo* the merits of the § 1983 claim to determine whether the principal and assistant principal were entitled to summary judgment on Ifill's allegation that they deprived her of her claimed First Amendment rights.

Ifill contends specifically that the trial court erred in denying her injunctive relief without analyzing her First Amendment claims within the context of the "public concern" standard set forth by the Supreme Court in *Pickering v. Board of Educ.*, 391 U.S. 563 (1968). In *Pickering*, a public school dismissed a school teacher because he sent a letter to a local newspaper criticizing the way the school board and the superintendent handled past proposals to raise revenue for the school. The Supreme Court held that a public employee must be able to speak freely on matters of public concern without fear of retaliation. The Court emphasized that "statements by public officials on matters of public concern must be accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors." *Pickering, supra*, 391 U.S. at 574.

In *Connick v. Myers*, 461 U.S. 138 (1983), the Supreme Court further explained what constitutes speech on matters of public concern. *Connick* involved the termination of an

Assistant District Attorney after she circulated a questionnaire to other attorneys in the office concerning office transfer policies and other work-related issues. The Court concluded that, except in one particular question, the questionnaire did not contain matters of public concern and thus the speech was not constitutionally protected.[6] The Court emphasized that "when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior." *Connick, supra*, 461 U.S. at 148. To determine whether the speech is a matter of public concern, the court must examine the content, form, and context of the speech at issue.[7] *Id.* at 147-48. "To presume that all matters which transpire within a government office are of public concern would mean that virtually every remark —and certainly every criticism directed to a public official — would plant the seed of a constitutional case." *Id.* at 149.

Finally, the Supreme Court found in *Rankin v. McPherson*, 483 U.S. 378 (1987), that a public employee's comment "if they go for him again, I hope they get him," referring to the assassination attempt on President Reagan, was speech on a matter of public concern. The Court emphasized the context in which the remark was made, and concluded that the employee was commenting on the policies of the Reagan Administration. "'Just as erroneous statements must be protected

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[6] The Court found one question to be a matter of public concern and balanced the interests of the employee and the employer before concluding that the question "carrie[d] the clear potential for undermining office relations" and thus was not protected under the First Amendment. *Connick, supra*, 461 U.S. at 152.

[7] "The inquiry into the protected status of speech is one of law, not fact." *Connick, supra*, 461 U.S. at 148 & n.7; *see Ferrera v. Mills*, 781 F.2d 1508, 1515 (11th Cir. 1986).

to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected.'" *Rankin, supra*, 483 U.S. at 387 (quoting *Bond v. Floyd*, 389 U.S. 116, 136 (1966)).

This argument does not further Ifill's claim that the principal and assistant principal deprived her of her First Amendment rights, however, because Ifill was not speaking out "as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest."[8] *See Connick, supra*, 461 U.S. at 147. Thus, her expression is not entitled to the First Amendment protection articulated in *Pickering, Connick*, and *Rankin*.

It is clear from the pleadings and related affidavits that all of Ifill's complaints discussed above are best characterized as an employee grievance based upon her disagreement with certain administrative decisions made by the principal affecting her immediate work environment. The record contains ten letters written by Ifill and her attorney to the Superintendent of Schools, the Mayor of the District of Columbia, and the President of the D.C. School Board, in which she expresses her dissatisfaction with the partition of her classroom and overcrowding of her work environment, and describes the subsequent harassment that ensued. In three of the letters, Ifill claimed that the overcrowding of her classroom constituted a fire and safety hazard. Ifill's comments, however, were not criticisms of public policy. Ifill was merely dissatisfied, initially, with the fact that another special education teacher was not being hired, and, later, with the fact that she

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[8] We need not address the *Pickering, Connick*, and *Rankin, supra*, analysis with respect to the Superintendent or the Board of Education because, as Judge Long found, "no evidence has been produced that would prove that the Superintendent [] or the Board of Education have taken any action to thwart the First Amendment rights of [Ifill] . . . ." *Supra* pp. 7-8.

had to share her classroom with another special education teacher.

Ifill's communications with school personnel dealt with her private employee grievances rather than with a matter of public concern. The circumstances surrounding her speech are similar to those in other recent federal appellate cases in which the courts have denied First Amendment protection. For example, in *Hartman v. Board of Trustees of Community College Dist. No. 508*, 4 F.3d 465, 471-72 (7th Cir. 1993), a special assistant to the Chicago City Colleges Chancellor alleged that the Chancellor sexually harassed her when he asked her to "help him obtain sexual favors from other women, including other City Colleges employees, calling it a privilege of his position." *Hartman, supra*, 4 F.3d at 468-69. The plaintiff claimed that after she told him that the requests were "an abuse of power" and would get him "in a lot of trouble," the Chancellor retaliated against her by placing her on administrative leave, eliminating her position, and returning her to her previous inferior position as a tenured faculty member.

The circuit court ruled that her allegations of sexual harassment did not deal with a matter of public concern, noting that "even if an issue is one of public concern in a general sense, as sexual harassment surely is, . . . we must ask whether the speaker raised the issue *because* it is a matter of public concern or whether, instead, the issue was raised to 'further some purely private interest.'" *Hartman, supra*, 4 F.3d at 471 (citation omitted). Thus, if the overriding reason for the speech is related to the speaker's personal interests, a passing reference to a public concern will not transform a private employee grievance into a matter of public concern. *Id.; see Cliff v. Board of School Comm'rs*, 42 F.3d 403, 409-11 (7th Cir. 1994) (teacher's complaints about size of math classes and general disorder of school not a matter of public concern because teacher made these complaints to support her claim that her poor teaching evaluations were unwar-

ranted); *Pearson v. Macon-Bibb County Hosp. Auth.*, 952 F.2d 1274, 1278-79 (11th Cir. 1992) (senior staff nurse's complaints about operating room nurses' performance of cleaning responsibilities related to personal matter even though remarks touched on conditions that might be potentially hazardous to patients); *Ezekwo v. New York City Health & Hosps. Corp.*, 940 F.2d 775, 780-81 (2d Cir. 1991) (medical resident's complaints of racial and gender discrimination which allegedly resulted in her not being appointed chief resident were not matters of public concern; "the mere fact that one or two of [her] comments could be construed broadly to implicate matters of public concern does not alter the general nature of her statements"); *Barnes v. Small*, 268 U.S. App. D.C. 265, 275-77, 840 F.2d 972, 982-84 (1988) (concluding that letters from civilian employee of Department of the Army, acting in his capacity as president of the local union, alleging misconduct of officials during personnel proceedings against union members, were not protected under First Amendment; the "letters addressed only the misbehavior of other employees in his office, and not matters relating to any broader public interest . . . . "); *Murray v. Gardner*, 239 U.S. App. D.C. 212, 216, 741 F.2d 434, 438 (1984) (refusing to find FBI agent's speech a matter of public concern merely because public monies and government efficiency are involved; "the role of a whistle-blower merits protection; the expressions of personal dissatisfaction by a discontented employee do not"); *See also Fox v. District of Columbia*, 877 F. Supp. 6, 7 (D.D.C. 1995) (report to police by director of security that money was missing from D.C. Lottery Board not matter of public concern because employee not speaking out as whistleblower against anybody but rather in routine of his job); *Wadud v. Willsie*, 735 F. Supp. 1488, 1494-95 (D. Kan. 1989) (psychiatrist's criticisms about new hospital policy curtailing employees' private practice not a matter of public concern regardless of argument that such policy will decrease standard of care at hospital).

Moreover, this case is unlike those in which courts have protected a public employee's speech because it dealt with a

matter of public concern. In *Zamboni v. Stamler*, 847 F.2d 73 (3d Cir. 1988), a detective privately expressed his dissatisfaction with the new promotion procedures with the head prosecutor. After being denied a promotion, transferred from a supervisory position to a non-supervisory one, and subjected to numerous disciplinary actions in retaliation for his criticisms, the detective wrote a letter to the Civil Service Commission stating that the prosecutor was evading civil service provisions. He then brought a § 1983 action. The circuit court found that the employee's speech, which dealt with the alleged circumvention of civil service laws by shifting an entire category of employees into unprotected positions, was a matter of public concern. The speech raised significant issues concerning whether the prosecutor properly performed his administrative functions. The court summarized its position by noting, somewhat broadly, that "public employees' criticism of the internal operations of their places of public employment is a matter of public concern." *Zamboni, supra*, 847 F.2d at 77.

Similarly, in *Tao v. Freeh*, 307 U.S. App. D.C. 185, 27 F.3d 635 (1994), the court found that a language specialist at the Federal Bureau of Investigation, who alleged racial discrimination after being denied a promotion, was entitled to First Amendment protection. Upon the denial of a promotion, the employee in *Tao*, who is an American citizen of Chinese descent, filed an administrative appeal alleging that the denial was arbitrary and capricious. In addition, she claimed to be the victim of racial discrimination. Unlike the treatment of other employees who were denied promotions, Tao never received a reassessment of her work submitted with her application, and her employer informed her that she must submit the lengthy application for a second time in order to be considered again. The court found that a requirement of many additional hours to resubmit a lengthy promotion application constituted an "adverse action" sufficient to implicate First Amendment concerns. The court also found that her speech, alleging that the denial of her promotion was due to racial

discrimination, was protected under the First Amendment because it dealt with a matter of public concern. The court stated that:

> [although] an individual personnel dispute does not generally constitute a matter of public concern, an employee's speech aimed at resolving a personnel dispute may touch upon an issue of public concern . . . The statement [in this case] is broader than an individual employee personnel grievance. It asserts that discrimination is occurring against all Chinese-Americans in Tao's unit, and specifically characterizes Tao's administrative appeal as a 'protest' against such racial discrimination. While the letter may have been instigated by an individual personnel dispute, its content reaches beyond that dispute to a broader issue - racial discrimination in a public agency.

Id. at 189-90, 27 F.3d at 639-40 (citations omitted). Examination of the content, form, and context of Ifill's speech reveals that it did not deal with matters of public interest to the extent that the speech at issue in *Zamboni* and *Tao* did.

Ifill alleges in three of the ten letters included in the record that the increase in the number of students in her classroom was "against the law," constituted "health, fire, safety, and building code violations," and "discriminated against" her special education students. Ifill's speech contains references to matters of potential public interest, but the form that it took and the fact that it was raised in the context of an intramural school dispute over the hiring of a teacher and classroom space allocation weaken Ifill's position. We decline to hold that because Ifill briefly mentions matters of potential concern to the public, this court must undertake a *Pickering* analysis. To hold otherwise would force this court to engage in a *Pickering* analysis whenever such incantations are uttered. Because Ifill's statements do not meet the "public concern" standard as developed in the case law, they are not

protected under the First Amendment, and thus Ifill's § 1983 claim, alleging the deprivation of a constitutional right by the principal and assistant principal, fails.

III.

We agree with Ifill, however, that the trial court's decision to grant appellees' motion for summary judgment and accordingly dismiss Ifill's second complaint based upon *res judicata* grounds was erroneous, because the District failed to object to the second complaint as splitting a cause of action until after the judgment that supposedly created the preclusive effect — the April 20, 1992 order — and thus impliedly waived this defense. *See Gilles v. Ware*, 615 A.2d 533, 543-49 (D.C. 1992) (per curiam) (adopting RESTATEMENT (SECOND) OF JUDGMENTS § 26 (1)(a) (1982) rule on claim-splitting which requires a party to raise objection that another action is pending based upon same claim or be deemed to have acquiesced in the splitting of plaintiff's claim and thus be unable to assert claim preclusion in either case based upon resolution of other).[9] In *Gilles*, the majority of the judges on the division agreed with the rule expressed in the RESTATEMENT (SECOND) OF JUDGMENTS, § 26 (1)(a),[10] that waiver by acquiescence can occur

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[9] There was no opinion for the court in *Gilles*, but the separate opinions of Judge (now Chief Judge) Wagner and Judge Ferren accepted the principle stated in RESTATEMENT (SECOND) OF JUDGMENTS, § 26 (1)(a) and Comment a, though they differed on whether the defendant's behavior constituted acquiescence.

[10] The RESTATEMENT (SECOND) OF JUDGMENTS, § 26 (1) states in pertinent part:

> (1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:
>
> (a) The parties have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein;

(Footnote continued on next page.)

when a defendant fails to object to the plaintiff's splitting of the claim. *See also Lake v. Jones*, 598 A.2d 858, 861 (Md. App. 1991) (adopting RESTATEMENT (SECOND) OF JUDGMENTS, § 26 (1)(a) and theory that failure to object to splitting of causes of action will act as acquiescence). Ifill, in her opposition to the District's motion for summary judgment, argued that the District waived the defense of *res judicata* and specifically cited the Restatement dealing with acquiescence to claim splitting.[11] There is no indication that the District objected to Ifill's splitting of the claim, and thus the District is precluded from arguing *res judicata* to bar Ifill's claim for damages after the trial court dismissed her claim for declaratory and injunctive relief.

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10 (Continued)

The third paragraph of Comment a reads in pertinent part:

> Where the plaintiff is simultaneously maintaining separate actions based upon parts of the same claim, and in neither action does the defendant make the objection that another action is pending based on the same claim, judgment in one of the actions does not preclude the plaintiff from proceeding and obtaining judgment in the other action. The failure of the defendant to object to the splitting of the plaintiff's claim is effective as an acquiescence in the splitting of the claim.

11 While appellant concedes that her first and second complaints are against the same parties and are based upon the same facts, she contends that she was "forced" to split her cause of action in order to comply with D.C. Code § 12-309 (1989 & 1994 Supp.). Appellant's argument is unpersuasive. Section 12-309 was created solely to provide reasonable notice to D.C. government officials of potential tort liability by the District. D.C. Code § 12-309 (1995 Repl.); *District of Columbia v. Campbell*, 580 A.2d 1295, 1299 (D.C. 1990). Accordingly, this section does not apply to § 1983 causes of action. *Johnson-El v. District of Columbia*, 579 A.2d 163, 170 (D.C. 1990) (Eighth Amendment claim brought under 42 U.S.C. § 1983 not subject to 12-309). Moreover, even if this section's notice requirements were applicable to the current case, compliance would not force or even encourage claim splitting.

Nevertheless, in light of our earlier holding, *supra* pp. 13-15, that Ifill's speech, consisting of letters to the Superintendent, School Board, and Mayor, did not involve matters of public concern and are not protected under the First Amendment, Ifill is not entitled to any monetary relief under § 1983.[12] *See Word v. Tiber Island Coop. Homes, Inc.*, 491 A.2d 521, 523 n.4 (D.C. 1985) (affirming judgment on other grounds than those relied upon by lower court).

IV.

Finally, we also agree with Ifill that the trial court's decision to dismiss her third § 1983 complaint based on her failure to exhaust her administrative remedies was erroneous. As we discussed *supra*, it is well-settled that exhaustion of administrative remedies is not required prior to filing a § 1983 legal action. *See Roache, supra*, 654 A.2d at 1284. However, as Ifill acknowledges in her third complaint, the issues she raised there in seeking declaratory and injunctive relief are a continuation of the dispute initiated in her first suit. The issues raised in appellant's third complaint do not even remotely raise matters of "public concern" because they focus on the stressed relations between Ifill and her school principal culminating in her proposed two-day suspension for insubordination — a routine employee grievance situation. Accordingly, the trial court's analysis regarding Ifill's claim for declaratory and injunctive relief, together with our application of *Connick*,

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[12] As an aside, Judge Long noted in her order granting summary judgment to the defendants in Ifill's second complaint, "[i]t is clear . . . that there is no right to bring an action for monetary damages for the sort of harm alleged by Mrs. Ifill," (citing *inter alia*, *Bush v. Lucas*, 462 U.S. 367 (1983)) (holding that federal civil employee cannot sue for monetary damages alleging constitutional tort because Congress provided meaningful remedies for federal civil employees who have been unfairly disciplined for making critical comments about workplace). We need not consider whether a holding like that in *Bush* would be made regarding District of Columbia employees.

control her third complaint, and require us to uphold the dismissal. *See Word, supra*, 491 A.2d at 523 n.4.

In view of the foregoing, the several orders of the trial court appealed here are affirmed.

So ordered.

B-1

District of Columbia
Court of Appeals
Filed December 21
1995

NOS. 92 CV 210; 92CV 492,92 CV 981 ,AND
92 CV 1393
LUCY C. IFILL,

Appellant,

v.

CA 15507-91
CA 8180-92
DISTRICT OF COLUMBIA CA 1211-92

BEFORE: Wagner, Chief Judge; *Ferren, Terry, Steadman, Schwelb, Farrell, *King, ** Ruiz and Reid, Associate Judges; *Belson, Senior Judge.

ORDER

On consideration of appellant's Petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

** Associate Judge Ruiz has recused herself from these cases.

C-1

Superior Court
of the District of Columbia
Civil Division

LUCY C. IFILL :CA 91-15507
v. :Calendar 13
:Judge Long
DISTRICT OF COLUMBIA, ET. AL.:

ORDER

This actin is before the Court pursuant to the Motion to Dismiss or in the Alternative for Summary Judgment, filed by defendants on January 7, 1992.

Plaintiff filed an opposition on February 25, 1992 and the court has heard oral argument.

The plaintiff is a teacher in the District of Columbia Public Schools. Defendants are the District of Columbia, the Superintendent of Schools (Dr. Franklin L. Smith), the District of Columbia Board of Education, Deborah Jackson Nesmith (who is principal of Raymond School),Timothy Williams (who is assistant principal of Raymond School), and Johnny Lowe (a guidance counselor at Raymond School). Plaintiff brings this civil rights suit for declaratory and injunctive relief, under 42 U.S. C. Sec. 1983.

Defendants seek dismissal of all claims in this action, raising several distinct legal issues: absolute and sovereign immunity, failure to exhaust administrative remedies, statutory immunity regarding the preeminence of the D.C. Comprehensive Merit Personnel Act ("CMPA"), and plaintiff's inability as

matter of law to meet the legal requirements for imposition of an injunction.

Previously, another judge of this court denied plaintiff's motion for a Temporary Restraining Order. Soon thereafter, this Court denied plaintiff's request for the issuance of a preliminary injunction that would have precluded defendants from convening a job rating interview with the plaintiff in the absence of her lawyer. That was the sole focus of the preliminary injunction ruling and the plaintiff has appealed it. The resolution of the preliminary injunction, if it is not already moot, is not dispositive of this case on the merits. Accordingly, this Court retains the power to rule with finality.

In order to address the present legal issues in a useful manner, it is necessary first to summarize and categorize the allegations in the Amended Complaint. Defendant do not admit any of the factual allegations but they argue, nonetheless, that there are multiple reasons for dismissing the action even if the incidents described in the complaint actually occurred.

1. ALLEGATIONS OF THE PLAINTIFF

The plaintiff asserts that in January , 1991 she was employed as a special education teacher, assigned to Raymond School. She alleges that she requested her principal to hire a "Replacement teacher" in order to conform to a law that applied to disabled students. When the principal refused to honor her request, the plaintiff wrote

letters to the Board of Education and to the Acting Superintendent of Schools, requesting that such a person be hired. Amended Complaint at 2. Thereafter, according to the plaintiff, numerous troubles ensured.

Ultimately, a second special education teacher was hired and the plaintiff essentially takes credit for bringing about this event.

Once the additional teacher was hired, plaintiff took other actions that had a negative impact upon one of the defendants, Nesmith. The plaintiff claimed she wrote letters complaining about Nesmith's proposal to partition the plaintiff's classroom, as being a violation of health and safety laws. Plaintiff also wrote letters to the Board of Education " protesting against the attempted discrimination against the handicapped and the attempted violation of the health and safety laws." Amended Complaint at 3.

Allegations Against Nesmith, Williams and Lowe. The plaintiff asserts that Nesmith and Williams then began a " campaign of harassment directed against the plaintiff, which campaign was later joined in buy defendant Lowe." Amended Complaint at 3.

Plaintiff describes the methods of her treatment at the hands of these defendants. She asserts: (1) that Nesmith and Williams shouted at her and used "boisterous language and gestures designed to humiliate the plaintiff and to cause other teachers to laugh at, jeer, humiliate the plaintiff;" (2) that

defendants (presumably those at the school site) "would talk ill of her plaintiff to other staff members, teachers, callers at the school (;)" (3) that in the absence of the plaintiff the principal and assistant principal " would encourage other teachers to file complaints and to make complaint against the plaintiff , all in an attempt to manufacture witnesses against the plaintiff." Amended Complaint at 4.

More specifically, the plaintiff claimed that Nesmith devised a scheme for goading plaintiff into making statements that would form a basis for some sort of administrative complaint. This conspiratorial tactic was alleged by the plaintiff to consist of directing the president of the school's PTA to post himself outside of room in which the principal would converse with the plaintiff, while the principal would " taunt" the plaintiff in an attempt to draw an abusive or improper reaction. The plaintiff surmises that the PTA president then would have had a basis upon which to "file charges" against her. Amended Complaint at 4. Plaintiff does not claim that any such complaints or "charges" ever were instituted or communicated.

Finally, the plaintiff complains that the principal gave her " poor ratings" and that plaintiff was threatened with " loss of employment, all on account of plaintiff's exercise of her First Amendment rights." Amended Complaint at 4.

Allegations Against Superintendent and the Board.

The plaintiff sets forth her theory as to alleged participation or complicity of the Superintendent and the Board of Education in the activities of the other individual defendants. As a principal matter, the plaintiff does not assert that Dr. Smith or the Board actually perpetrated any affirmative acts against her. Rather, she claims that the Superintendent and the Board received letters outlining her charges about Lowe, Williams and Nesmith and that the Board and the Superintendent have done nothing to satisfy her complaints. Plaintiff states, for example, that the Superintendent specifically declined to do anything about her allegations except to advise her to seek redress with the Teacher's Union. Amended Complaint at 5.

Plaintiff' Demand for Relief: The plaintiff demands relief specifically in the form of a permanent injunction that would restrain the defendants from "harassing , abusing, threatening" her and " from using abusive and humiliating language towards the plaintiff on account of the plaintiff's exercise of her First Amendment rights (.)" Moreover, she seeks an order enjoining defendant " retaliating against the plaintiff on account of her exercise of her First Amendment rights (.)" Amended Complaint at 7.

Notably, the plaintiff does not demand any money damages from any of the defendants, nor does she seek specific relief such as an order that would force defendants to correct, modify, or withdraw any of her performance appraisals or job ratings. This is not a tort case of any sort. Even though the

plaintiff describes certain incidents of "harassment," she does not put forth any monetary claim to compensate her for intentional infliction of emotional distress.

11. THRESHOLD ISSUES RAISED IN THE MOTION.

Although the defendants list a variety of bases upon which to dismiss this action, some of the concepts underlying the arguments actually overlap. These threshold issues are separate and apart from the more detailed analysis of the four factors that must be weighed on the merits in determining whether a permanent injunction should issue.

Failure to Exhaust Administrative Remedies. One concept that recurs throughout the Motion is the assertion that the plaintiff has failed to exhaust administrative remedies that where allegedly available to her within the school system. That issued should be explored first, if only because it impinges on the factors that must be satisfied for injunctive relief.

Defendants have stressed at all stages of this litigation that the plaintiff not only has failed to exhaust administrative remedies, but that she has knowingly declined to pursue them at all. The plaintiff does not actually dispute this assertion but claims that she is simply not obliged to avail herself of any such process in advance of filing this action.

The defendants summarize the problem

as follows. The plaintiff has the option of (1) filing an ordinary "grievance" under the CMPA against her supervisors or even against her coworkers, in which she could ask that they be reprimanded or removed because of their behavior towards her; or (2) bringing a complaint to the attention of the Teacher's Union under her contract.

Plaintiff has been invited to do so and has refused. She does not dispute receiving a letter from Cecelia Wirtz, Esq. in the General Counsel's Office of the Board of Education, in which Ms.Wirtz reviewed her general complaints and specifically advised her to prepare a complete package of information for use in a grievance procedures. That letter is found in the record as Attachment 2 of the Plaintiff's Opposition to Defendants' Motion to Dismiss. Plaintiff does not dispute the fact that she failed to seek any relief from her union.

While a union process is not the same as the processes of an administrative, governmental agency, the concept of exhaustion is similar. The fact remains that the plaintiff also has the option of pursing a grievance under the Merit Personnel Act, if she chooses not to avail herself of the arbitration procedures within her union. She has done neither.

The plaintiff specifically argues that she is not required to initiate any type of administrative grievance because of the nature of her complaint, i.e. that she is seeking to vindicate her First Amendment rights and is not proceeding upon any other theory of liability or any

other basis of suit. Her contention is that as long as First Amendment rights are the root of her complaint she is absolved completely from the obligation to exhaust administrative remedies prior to bringing a Sec. 1983 suit. She cites as authority for her position the Supreme Court opinion in Schweiker v. Chilicky, 487 U.S. 412 (1988).

The facts of Schweiker are as follows. The plaintiffs were persons who sought money damages from the Secretary of Health and Human Services, and other federal officials for emotional distress and for loss of necessities proximately caused by their termination from a Social Security benefits program. *Id.* at 418-419. Ultimately , the Supreme Court held that the improper denial of Social Security disability benefits, allegedly resulting from due process violations by the administrators, cannot give rise to a cause of actin for money damages. Id. at 420-429.

The Supreme Court premised its ruling upon its history of finding no such cause of action in other cases brought against government officials. Notably, the Supreme Court relied upon its prior holding in Bush v.Lucas, 462 U.S. 367 (1983). Indeed, the defendants herein cite Bush as relevant case law that compels dismissal of this action.

In Bush, the Supreme Court refused to create a Bivens remedy for a First Amendment violation ' arising out of an employment relationship that is governed by comprehensive procedural and substantive provisions giving meaningful

remedies against the United States.' "Schweiker v. Chilicky, supra at 422, quoting Bush v. Lucas, supra, at 368. The Supreme Court made reference to litigation of claims for monetary damages for so -called " constitutional torts " under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

In Bush, the plaintiff was a so called whistleblower as in the plaintiff herein. In Bush, the federal employee was a person who was demoted, assertedly in violation of the First Amendment "for making public statements critical of the agency for which he worked. He was reinstated through the administrative process, with retroactive seniority and full backpay, but was not permitted to recover for any loss due to emotional distress or mental anguish, or for attorney's fees." Schweiker v. Chilicky, supra, at 423, citing Bush v. Lucas, supra, at 371, 372 and nn, 8-9, 390-391.

In addition to declaring that the plaintiff in Bush could not seek money damages, the Supreme Court also concluded that the federal government's personnel system " provides meaningful remedies for employees who may have been unfairly disciplined for making critical comments about their agencies ... " Bush v. Lucas, supra, at 386 (footnote omitted). The Supreme Court took this approach even though it was clear that the plaintiff was in effect seeking to avenge his First Amendment rights.

It is clear then, under the dual holding of Bush and Schweiker, that there is no right to bring an action for monetary damages for the sort of harm

alleged by Ms. Ifill.

However, in the instant case, the plaintiff does not seek money damages. Instead, she desires a declaratory judgment and injunction that would order defendants to stop the alleged harassment that she claims is an impediment to her exercise of her First Amendment rights. Thus, both parties are mistaken in their reliance upon Bush Schweiker, because neither case applies to demands for purely declaratory and injunctive relief.

The issue of exhaustion of administrative remedies must be analyzed in a way that is different from the manner in which the plaintiff and defendants have attacked this problem.

As a threshold matter, the plaintiff is correct in arguing that there is no requirement that she exhaust administrative remedies prior to filing suit under Sec. 1983. The cases that she cites for this principle are all cases in which various federal courts, including the Supreme Court, have held that there is no requirement that a federal plaintiff exhaust State remedies prior to filing an actin under Sec. 1983. See, e.g., Houghton v. Shafer, 392 U.S. 639 (1968); Damico v. California, 389 U.S. 426 (1967); McNeese v. Board of Education, 373 U.S. 668 (1963).

Where a party files suit in a local court under this section, it is equally true that there is no generalized exhaustion requirement. The legal principals that apply to Sec. 1983 litigation in federal court are not different when the action is brought in the Superior Court of the District of

Columbia. This, this Court will not impose any requirement upon the plaintiff that she exhaust administrative remedies as a prerequisite to filing this action.

Immunity from Suit: The District of Columbia and defendants Board of Education and the Superintendent of Schools all contend that they are immune from suit in this litigation. The case law cited for this proposition is primarily District of Columbia v. Thompson, 570 A. 2d 277 (D. C. 1990) (Thompson I) and District of Columbia v. Thompson , 593 A. 2d 621 (C. 1991) (Thompson II).

In Thompson I, the District of Columbia Court of Appeals squarely adopted the judicial rule that a governmental employee's immunity from suit in tort cases derives from a finding that his or her acts are "discretionary" rather than "ministerial." Counsel for the defendants stresses that the Superintendent and the Board are of such high levels of responsibility that they are performing policy functions and thus cannot be sued.

In Thompson II, the Court of Appeals held that the District of Columbia Merit Personnel Act is the sole mechanism for litigating disputes imposing remedies for claims arising out of employer conduct in handling personnel ratings , employee grievances, and adverse actions.

The two Thompson cases are not dispositive of the instant Motion ,because the present case is simply not a tort action, nor does it contain a claim for monetary damages or tangible relief

such as the requirement that new performance ratings be formulated. Here also, thee is no claim that the plaintiff has been demoted, removed or that her pay has been affected in any way by an official adverse action. Thus, there is no basis for any relief other than declaratory and injunctive relief. In these circumstances, those cases addressing immunity in tort cases for claims for discrete relief in adverse action matters are all inapposite to the instant civil action.

This court finds ,under the above analysis, that the defendants are not immune from suit in this Sec. 1983 action. There is case law already supporting the principle that official immunity does not apply in suit for declaratory and injunctive relief. See Pulliman v. Allen, 466 U.S. 522 (1984). Moreover, the concept of immunity in Sec. 1983 cases is disingenuous in light of the whole purpose of this civil rights statue. Its purpose in fact is to afford opportunities for litigation that will eliminate infringement of Constitutional rights by government official who are often found in policy-making positions. Where unconstitutional policies are at issue the defendants are by definition, the policy-makers. Accordingly , there is no absolute or sovereign immunity that applies to this action.

III. THE INJUNCTION ANALYSIS

The Motion and its Opposition provide the Court with the arguments of the parties on the four factors that must be assessed in order to determine whether

declaratory and injunctive relief should be granted as a final resolution of this case. At the outset, those factors can be summarized as follows.

The decision to grant or deny injunctive relief is committed to the sound discretion of the trial court. In re Antioch University, 418 A. 2d 105, 109 (D. C. 1980). To properly exercise its discretion, this Court must take into account " whether the moving party has clearly demonstrated (1) that there is substantial likelihood (plaintiff) will prevail on the merits; (2) that (she is) in danger of suffering irreparable harm during he pendency of the action; (3) that more harm will result to (plaintiff) from the denial of the injunction than will result to the defendants from its grant; and in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order." Stamenich v. Markovic, 462 A. 2d 452, 456-4357 (D.C. 1983), quoting Wieck v. Sterenbuch, 350 A. 2d 384, 387 (D. C.) (1976).

For over two decades , courts have looked to these issues in weighing the propriety of imposing the extraordinary remedy of an injunction. See Washington v. Metropolitan Area Transit Comm'n v. Holiday Tours, 559 F. 2d 841 (D. C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F. 2d 921 (D. C. Cir. 1958). Each of the four factors is addressed herein.

Likelihood of Prevailing on the Merits. The underlying "merits" would be a factual determination that indeed the

defendants have violated the First Amendment rights of the plaintiff through acts that were perpetrated " under color of (a) statue, ordinance, regulation, custom or usage of (this jurisdiction)." See, 42 U.S. C. Sec. 1983. Furthermore, the plaintiff would have to be able to prove that the Superintendent and the Bard of Education have each violated her rights in some manner separate and apart from the individual actions of defendants Nesmith, Williams, and Lowe.

The court notes that the Opposition to the instant motion includes (as attachment 3) only the affidavit of the plaintiff as "evidence." No evidence has been produced that would prove that the Superintendent Smith or the Board of Education have taken any action to thwart the First Amendment rights of the plaintiff. The Board has done nothing at all, as no administrative complaint was ever initiated. The Superintendent has taken no official action against the plaintiff. Taking the plaintiff at her word, Dr. Smith through his staff merely directed the plaintiff to pursue recourse through her union. This Court finds as a matter of law that this response by Dr. Smith does not suffice as any genuine evidence of conduct offensive to the Constitution.

It is striking that , where the individual defendants are concerned, there is no evidence in this record that the individual defendants took their actions against the plaintiff " under color of law" or pursuant to a government policy. Rather, even if the allegations are true, the logical inference to be drawn (without more facts in the record) is that their actions (if they were

committed were entirely a peevish, personal frolic. Thus, the plaintiff could not prevail after a full trial.

It is well settled law that " a necessary element of a section 1983 violation (is) that there be a deprivation of rights under color of (law)" Dant v. District of Columbia, 829 F. 2d 69, 77 (D. C. Cir. 1987). Plaintiff has not responded to the Motion with proof of any facts that would establish this element. Accordingly, she cannot prevail on the merits of her claim before this Court.

Irreparable Injury to the Plaintiff. In order to secure injunctive relief , the plaintiff must show at this stage of the litigation that without a permanent injunction she will suffer injuries that cannot be redressed otherwise. This is clearly not the case. Here again, it is relevant to revisit the concept of exhaustion of administrative remedies or nonjudicial remedies. While the failure to exhaust remedies does not bar the litigation of this case, such a failure is of great importance where a nonjudicial forum could have provided tangible (and perhaps quicker) relief to the plaintiff and where she chose to ignore the opportunity . Insofar as the plaintiff purposely declined to file an employee grievance or to initiate a complaint through her union against her supervisors and other employees, she committed a fatal error.

Within the various nonjudicial forums, the plaintiff could have demanded protection from harassment and such protection could have been provided in

numerous alternative ways, including possible demotion or removal of Deborah Nesmith, Timothy Williams and Johnny Lowe. In lieu of this type of action, the Bard of Education ultimately might have elected to transfer these offenders to other locations so that they would never again be in contact with the plaintiff. It is clear from the record of this case that the plaintiff has a preference for remaining in the school where the underlying disputes erupted. She also appears to assume that she has no alternative but to work alongside the alleged offenders. However, the Board of Education might also have determined in its discretion that a better way to prevent future harassment might be to provide the plaintiff with a different job site with equal status and responsibilities. There is probably still other permutations of administrative relief that could have eradicated the underlying problems months ago.

Plaintiff's alleged injuries of being humiliated and bothered are all problems that can be remedied and they are clearly subject to repair or redress. Under no circumstances can this Court find that the difficulties of which the plaintiff complains are " irreparable" in the absence of a permanent injunction from the Superior Court.

Balancing of the Equities. The third prong of the injunction analysis requires the Court to balance the equities that affect each party. The Plaintiff argues that if an injunction is issued "defendants would suffer no harm and would have to cease harassing the plaintiff, cease intimidating the

plaintiff, cease taking reprisals against the plaintiff for the exercise of her First Amendment rights. " Opposition at page 10.

Defendants Smith and the Board argue that they would suffer harm if an injunction is issued. At the oral argument on the instant Motion, counsel for the plaintiff expounded upon the natural and probable effect of the issuance of the injunction. In substance, he verified that an injunction would set up a permanent system whereby the plaintiff -- at any time into the future-- would retain the right to petition the Court to intercede in any job-related situation in which she believed that the defendants had resumed harassment. In these anecdotal circumstances, the Court would perpetually assume the statue of her presumptive supervisor, always poised to second-guess and review the future actions of her supervisors and coworkers-- and possibly pre-empting discretionary decisions of the Board of Education and the Superintendent of Schools. In other words, plaintiff envisions that (once armed with a permanent injunction) she would always be able to bring the defendants before the Court whenever she was displeased with the manner in which she was being treated.

The court inquired of plaintiff' counsel whether this would not be a major imposition upon the Court system as a whole and a fundamental, pre-emptive affront to the Board and Superintendent. Plaintiff's counsel failed to perceive the problem and insisted that the plaintiff could be trusted not to bother the Court with petty requests. Only the

court , however, is the ultimate arbiter of what is petty or significant.

The iniquity of a permanent injunction lies in granting the plaintiff the unilateral and permanent ability to haul the Superintendent and Board of Education into Court, even where they may be ultimately vindicated after possibly unnecessary, expensive and disruptive litigation. The Court is convinced that the plaintiff desires to use this power as an ongoing leverage against all of the defendants and that she desire to be able to use the court system to air her gripes without having to trouble herself to file appropriate administrative complaints. This is wholly inequitable and inappropriate.

The court balances the equities in favor of the defendants, but primarily upon the basis of the equities that especially apply to the Superintendent and Board. It is not practical or feasible to issue an injunction against Nesmith alone, for example, without implicating the independence of the Board and the Superintendent of Schools who are responsible for controlling behavior inside of a public school. There is no permanent harm that will enure to the plaintiff if the injunction is not issued. She will simply be required, if she chooses, to pursue administrative o other nonjudicial forms of relief that she previously eschewed- and she may in fact obtain complete satisfaction.

The effect upon the public interest. The public interest would not be served by the issuance of an injunction in this case . Specifically because there

has been no exhaustion of administrative remedies , there has been no showing that non judicial avenues of relief are unavailable or that they are inadequate to protect the plaintiff. This Court is simply not presented with a case in which the plaintiff was not provided a rational and relevant way in which to resolve her accusations within the school system in the first instance.

The Court should not and will not indulge in any assumption that the plaintiff cannot receive a fair hearing of her allegations within the normal channels for airing such claims. Manifestly, it is not in the public interest that this Court should presume that the school system in incapable of handling the plaintiff's allegations . It is also not in the public interest , with the high volume of litigation in this curt system, for judges to adopt the role of supervising the careers of individual school teachers.

Moreover, the plaintiff has never explained to the court's satisfaction her real reason for ignoring other forums of relief. She refuses to state a reason and simply repeats her contention that she is not required to exhaust her administrative remedies in order to file the instance civil action.

While this is technically true, once she has filed the case the exhaustion problem does not evaporate altogether. Instead, it is a relevant issue that returns in a different context from her threshold right to file the case.

The case law is replete with

examples of Sec. 1983 cases in which courts from around the nation have declined to grant relief- for prudential reasons- in similar situations. For examples, the United States Court of Appeals for the Second Circuit has held that where a city employee claiming denial of procedural due process was not required to exhaust state remedies before bringing a Sec. 1983 action , this did not affect his duty to prove the inadequacy of state procedural remedies as an element of his procedural due process violation claim. Marino v. Ameruso, 837 F. 2d 45 (2d Cir. 1988). In the context of a taxpayer complaint , another circuit has found that if there is a plain, adequate and complete state remedy available, principles of comity bar taxpayers from contesting the validity of a state tax in a damage action under Sec. 1983. Werch v. City of Berlin, 673 F.2d 192 (7th Cir. 1982).

The declination to impose relief under Sec. 1983 where there are adequate but unused administrative remedies is a discretionary matter for a trial court. While the mere existence of such remedies does not preclude the filing of a Sec. 1983 action, it is prudent not to grant injunctive relief if there is no pressing, concrete reason to believe that such an extraordinary remedy is the only way in which to provide redress to the plaintiff. This is the situation in the case at bar . As a discretionary matter, this Court declines to issue an injunction for the reasons stated herein. Wherefore, it is by the Court this 20th day of April, 1992

ORDERED, that defendant's Motion is

granted in this summary judgment is granted in favor of the defendants and the claim for declaratory and injunctive relief is denied; and it is

FURTHER ORDERED that the status hearing scheduled for April 24, 1992 is hereby vacated as unnecessary.

_____/s/_____
Cheryl M. Long
Associate Judge

The Order of Judge Shuker
Dismissing the Complaint
(Suspension Lawsuit)
CA 8180-92

The Court: The injunction is denied, at this time, for failure to exhaust administrative remedies. That's the posture of the case.

Counsel: Your Honor, as far as the case is concerned , all the plaintiff was asking was for a temporary restraining order and an injunction, and if the court has ruled that that is--

The Court: Premature

Counsel: -- is premature?

The Court: Yes, sir.

Counsel: Then, I think the Court should go ahead and dismiss the complaint, because there's nothing left for the Court to decide.

The Court: I think I have.

E-2

LAW OFFICE
ADRIAN PALMER IFILL
1133 15TH STREET, NW
WASHINGTON, D. C. 20005

January 11, 1991

Dr. William Brown
Acting Superintendent
D. C. Public School
Room 1209
415 12th Street, NW
Washington , D. C. 20004

Re: Special Education Overcrowding
Raymond Elementary School
Mrs. Lucy C. Ifill, Teacher

Dear Dr. Brown:

The purpose of this letter is to make you aware of the immediate need for an additional Special Education teacher at the Raymond Elementary School to replace the retired Special Education teacher.

Upon retirement of the referenced teacher , the pupils were divided and given to other teachers. Seven (7) of the pupils were placed in my client's class. As a result my client's class is overcrowded and my client cannot function in this overcrowded environment.

As you know, overcrowding is against the law.

I look forward to the situation being remedied within the next fifteen days.

Very truly yours,

_____/s/_____
A. Palmer Ifill, Esquire

E 2

LAW OFFICE
ADRIAN PALMER IFILL
1133 15TH STREET, NW
WASHINGTON, D. C. 20005
February 14, 1991

Dr. William Brown
Acting Superintendent
D. C. School Board
room 1209
415 12th Street, NW
Washington,D. C. 20004

Re: Letter of January 11, 1991
Raymond Elementary School

Dear Dr. Brown:

As a result of the letter of January 11, 1991, R. David Hall, the President of the School Board , delegated Ms. Sandra Butler-Truesdale to investigate the matter. This resulted in a special education teacher being hired to replace the teacher who left.

As indicated in letters to Ms. Butler-Truesdale and to Mr. Hall, attached, significant problems remain with respect to the proposal to not give the newly hired teacher the classroom left by the teacher who departed, but to build a make-shift partition between my client's calls and to have two teachers operate in essentially the same classroom.

Such a proposal if carried out will result in health, fire, safety, and building code violations as well as violations of the standard for classroom structure.

It is my hope as expressed in the letters attached, that such a proposal be not carried out.

Gone are the days when anything may be thrown at special education students who were expected to be thankful.
It is my hope that the proposal be not implemented.

Very truly yours,
_____/s/_____
A. Palmer Ifill, Esquire

LAW OFFICE
ADRIAN PALMER IFILL
1133 15TH STREET, NW
WASHINGTON, D. C. 20005
March 4, 1991

Dr. William Brown
Acting Superintendent of Schools
D. C. Public Schools
415 12th Street, NW
Washington,D. C. 20004

Re: Letter Dated March 4, 1991
Harassment of Mrs. Lucy C. Ifill
Special Education Teacher
Raymond Elementary School

Dear Dr. Brown:

In a letter sent to you by express mail, I identified by client Mrs. Lucy C. Ifill as a Special Education Teacher at Brown Elementary School. This is a misstatement. My client is a Special Education teacher at Raymond Elementary School.

As corrected the letter should read as follows:

" By letters dated January 11, 1991; February 14, 1991 and February 21, 1991, copies of which are enclosed for easy reference, certain deficiencies with respect to the Special Education Program at Raymond Elementary School were brought to your attention.

" The purpose of bringing these deficiencies to your attention was that the Special Education Program may be improved and the children obtain greater benefit from the program.

"As a result of bringing these deficiencies to your attention, my client, Mrs. Lucy C. Ifill, is being harassed by the Principal and the

Assistant Principal of Raymond Elementary School.

" It is urged upon you that you do all within your power to see to it that this harassment stop immediately. In seeking to have a teacher placed in the Special Education Program and in seeking proper space for the Special Education Children my client has done nothing wrong and will not be the subject and object of harassment.

"I thank you in advance for your intervention in this matter.

Very truly yours,

_____/s/_____
A. Palmer Ifill, Esquire

LAW OFFICE
ADRIAN PALMER IFILL
1133 15TH STREET, NW
WASHINGTON, D. C. 20005
February 14, 1991

R. David Hall
President
D. C. School Board
12th Floor
415 12th Street, NW
Washington, D. C. 20004

Re: Letter of January 11, 1991

Dear Mr. Hall:

This letter is a follow-up of the letter of January 11, 1991, attached hereto.

As a result of the letter written to you Ms. Sandra Butler-Truesdale did communicate with me; see, letter of January 1991, attached hereto.

A teacher was sent to the school on February 12, or thereabout, to teach a class in Special Education. However, significant violations remain in that instead of the teacher being given the classroom vacated by the past teacher, a proposal has been made to partition my client's existing classroom and to have two teachers teach with only a make-shift partition between them.

Such a proposal , if carried out, will be unsafe and will constitute safety and health violations, as well as building code violations, not to mention the numerous violations with respect to established rules and regulations regarding classroom structure.

Special education students are entitled , like other students, to a

classroom environment that is conducive to learning and to equal facilities with to the rest of the students at the school.

It is my hope that such health, fire, safety hazard, as proposed; such a make-shift partition, as proposed, be not implemented.

Very truly yours,

_____/s/_____
A. Palmer Ifill, Esquire

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E-8

LAW OFFICE
ADRIAN PALMER IFILL
1133 15TH STREET, NW
WASHINGTON, D. C. 20005
March 15, 1991

Honorable Sharon Pratt Dixon
Mayor of the District of Columbia
District Building
1350 Pennsylvania Avenue, NW
Washington,D. C. 20004

RE: Mrs. Lucy C. Ifill
Special Education Teacher
Raymond Elementary School
10th and Spring Road, NW
Washington, D. C.

Dear Mayor Dixon:

It is with great reluctance that I write to you in an attempt to have the following problem solved:
On January 11, 1991, I wrote to the Acting Superintendent of School for the District of Columbia in an attempt to have the need for a Special Education teacher at Raymond Elementary School met. A copy of the letter is attached.

Shortly thereafter, a special education teacher was hired to replace the retired teacher. However, the classroom was taken away from the special education program and two teachers were placed in the same classroom to teach two classes in the same room at the same time.

This was objected to by letter dated February 14, 1991. This letter is also attached.

The problem was perceived not as a violation of law or as a violation of

educational policy but rather, as the desire of my client to not share a classroom with another teacher.

My client was then removed to a separate classroom, and in her pace and stead was placed another special education teacher. Thus, in effect the problem has not been solved.

...

Indeed ,the Special Education students, teachers at Raymond Elementary School are being discriminated against .A classroom was taken away from the Special Education Program. Two teachers were placed in the same room to teach two different classes at the same time. The classroom that was taken away was given to regular education.

While no make shift partition was erected, as proposed, the fact remains that there is blatant discrimination against the Special Education Program at Raymond Elementary School.

Indeed, my client has decided to take the risk and to stand upon against this discrimination. My client has been harassed for it. See, letter of March 4, 1991, directed to Dr. William Brown. Despite the letter to Dr. Brown the harassment continues and he has done nothing about it.

I do hope you give this letter your immediate attention.

Very truly yours,

_____/s/_____
A. Palmer Ifill, Esquire

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E-10

LAW OFFICE
ADRIAN PALMER IFILL
1133 15TH STREET, NW
WASHINGTON, D. C. 20005

August 19, 1991

Dr. Franklin L. Smith
Superintendent of Schools
District of Columbia Public Schools
415 12th Street, NW
Washington, D. C. 20001

Re: Enclosed Letters
Mrs. Lucy C. Ifill
Raymond Elementary School

Dear Dr. Smith:

By letter dated Mary 23, 1991, a copy of which is enclosed , I advised the then Acting Superintendent that I will take up with you the unresolved matters regarding my client, Mrs. Lucy C,. Ifill, with you. The unresolved matters concern the following:

In the past year my client has experienced great difficulties at Raymond Elementary School in dealing with the principal. These problems had their origins in the commitment of my client towards special education in the face of opposition to special education by the principal.

The principal has responded in the past with harassment of my client of all sorts, including giving my client a rating which is highly unusual for her; verbal abuse, encouragement of attitudes of disrespect by the use of open abusive language and conduct towards my client.

The enclosed letters detail the difficulties experienced by my client including the unresolved matter indicated by the letter of June 24, 1991,

concerning my client's performance rating.

If my client is assigned to Raymond Elementary School for the coming school year, it is my hope that you will take decisive actions and approaches to solving the continuing problems indicated by the attached letters.

Dr. William Brown has failed to attend to the problem and it appears that the District of Columbia School system is without any mechanism to deal with principal abuse.

Very truly yours,

_____/s/_____

A. Palmer Ifill, Esquire

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F-1

SUSPENSION LAWSUIT

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA

LUCY C. IFILL,
Plaintiff,
v. CA 8180-92
JUDGE SHUKER

THE DISTRICT OF COLUMBIA
FRANKLIN L. SMITH
Superintendent of Schools
DEBORAH NESMITH JACKSON
PRINCIPAL, RAYMOND SCHOOL

AND
GILDA H. LAMBERT
Defendants.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Jurisdiction: Jurisdiction is vested in this Court by virtue of Title 11, Section 921 of the D. C. Code, 1981 Edition, as amended; and by virtue of 42 U.S.C. 1983.

CLAIM FOR RELIEF:

1. Plaintiff is a teacher employed by the District of Columbia.

2. Plaintiff has two lawsuits pending against the defendants, Civil Action No. 91-15507 and Civil Action

No.92-1211, both of these lawsuits allege violation of 42 U.S. C. 1983, and both actions stem from conduct of the principal of Raymond School and the defendants herein.

3. The present controversy is a continuation of the retaliatory conduct of the Principal of the Raymond School against the plaintiff herein on account of the plaintiff making certain reports to the School Board concerning the defendant principal and as a result of the plaintiff's filing of lawsuits against the defendants.

4.On June 17, 1992, the plaintiff received the attached letter informing her that she was being suspended for two days commencing June 22, 1992. Exhibit One.

5.The basis of the suspension is completely false and is without support in fact or in law and is a desire on the part of the defendants, their servants, agents to further retaliate against the plaintiff on account of her pending lawsuits against them, and on account of the plaintiff's continued efforts to assure that the rules and regulations are complied with through making of reports to the School Board and other school personnel.

6.The suspension of the plaintiff if not blocked would irreparably cause harm and injury to the plaintiff's First Amendment rights, rights of access to the Courts, and would irreparably have a chilling effect on the plaintiff's exercise of her First Amendment rights and rights of access to the courts.

7.Plaintiff has no adequate remedy at law. No remedy at law could remove the chilling effect of the defendants' conduct on the plaintiff's exercise of her first amendment rights and right of access to the court but a temporary restraining order and an injunction.

8.Plaintiff is likely to prevail on the merits of her lawsuit against the defendants. The events alleged in the letter of suspension never occurred and are a complete fabrication.

9. The public interest favors the grant of an injunction and a temporary restraining order in that persons in the plaintiff's position must be protected against heavy-handed conduct by defendants when they seek to exercise their first amendment rights and rights of access to the courts.

10. The defendants, their servants, agents and each of them individually and in concert , under the color of law statute , ordinance, regulation, custom or usage have caused the plaintiff to be subjected to the deprivation of rights, privileges, immunities secured to the plaintiff under the First Amendment to the Constitution of the United States and under the Due Process Clause of the United States Constitution in that the defendants , their servants, agents, has imposed the suspension of the plaintiff for the exercise of her first amendment rights , and the right of the plaintiff to petition the court for redress of her grievances guaranteed by the Due Process Clause of the Constitution.

11. Plaintiff is entitled to a temporary restraining order against the defendants and to an injunction enjoining the defendants, their servants, agents, from suspending the plaintiff for the exercise of her First Amendment rights and the rights guaranteed her by the Due Process Clause of the United States Constitution.

Wherefore, the premises considered, plaintiff prays that a temporary restraining order and a preliminary and permanent injunction be issued in this case enjoining and restraining the defendants, their servants and agents from suspending the plaintiff.

_____/s/_____
Lucy C. Ifill

Subscribed to and Sworn to before me this 18th dy of June, 1992.

_____/s/_____
Notary public